

An abstract graphic on the left side of the slide, consisting of a large, stylized letter 'V' shape. The 'V' is formed by overlapping, semi-transparent layers of various shades of blue and teal, creating a sense of depth and movement. The background of the 'V' is a light gray color.

Don't Get Burned: Five Common Wage & Hour Mistakes Restaurant and Food Service Employers Are Still Making

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Why do Wage-and-Hour Trouble Restaurant and Foodservice Employers?



- Tipped Employees
- Variable Work Schedules / Overtime Pay
- Higher Employee Turnover
- Industry Profit Margins
- Mandatory Uniforms
- Recordkeeping Difficulties

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Overview of Today's Five Topics



- 1) Paid Sick Leave in New York City and Other Areas
- 2) Overtime Wages and Exemptions
- 3) Tip Credits and Other Minimum Wage Issues
- 4) Recordkeeping Obligations
- 5) Uniform Pay Rules



Paid Sick Leave



- Overview:

- Employers with five or more employees who are employed in NYC more than 80 hours in a calendar year
- Employees accrue one hour of sick leave for every 30 hours worked, up to a maximum of 40 hours per year
- Paid sick leave accrues immediately, but employees are not guaranteed the right to use leave until after 120 days from hire



Paid Sick Leave (cont.)



- Problem Areas for Employers:
 - Notice requirements - \$50 penalty per employee
 - Employers must either pay employees for unused paid sick leave at the end of the year or permit them to carry over the time into the subsequent year
 - Written policy now required
 - No retaliation
 - No medical documentation required until absent for more than three consecutive days



Overtime Wages and Exemptions



- Overview:

- Unless exemption applies, 1 ½ times regular rate of pay for work in excess of 40 hours per week
- Most exemptions subject to two-part test
 1. The employee's primary duties
 2. Whether the employee is paid an adequate salary
- Executive and administrative exemptions most common for the industry



Overtime Wages and Exemptions (cont.)



- Problem Areas for Employers:
 - Salary requirement - \$675/week in New York; soon to be higher under federal law
 - Refusing to pay unauthorized overtime
 - No written job descriptions
 - Six-year recordkeeping requirement



Tip Credits and Other Minimum Wage Issues



- Overview:

- New minimum wage on December 31, 2015:
 - \$9.00 for non-tipped employees
 - \$7.50 for tipped employees in hospitality industry
- Pay rate notices and minimum tip earnings required for tip credit eligibility
- Extra hour of minimum wage pay for spread of hours greater than 10 hours in a workday



Tip Credits and Other Minimum Wage Issues (cont.)



- Problem Areas for Employers:
 - No contemporaneous time and pay records
 - Missing or incomplete pay rate notices or wage statements → barred from claiming tip credit
 - Tip credit improperly claimed for non-tipped work (a.k.a. the “80/20 rule”)



Recordkeeping Obligations



- Overview:
 - Pay rate notice at time of hire (and revised notice issued within 7 days if any changes implemented)
 - Wage statement with each payment of wages
 - Documents in employee's primary language
 - Contemporaneous time and pay records
 - Notice of leave policies; e.g., sick, vacation, personal leave



Recordkeeping Obligations (cont.)



- Problem Areas for Employers:
 - Six-year recordkeeping requirement in New York
 - Failure to keep tip-pooling records
 - Rebuttable presumption that employee's claimed work hours and pay is true if incomplete recordkeeping
 - Lack of signed handbook acknowledgement form
 - No receipts for cash payments to employees



Uniform Pay Requirements



- Overview:
 - If an employer requires a uniform, it typically must bare responsibility for providing and cleaning the uniform
 - Employers may either clean the uniform themselves or pay employees for the cost of cleaning
 - Over 30 hours/week: \$11.20
 - Over 20 to 30 hours/week: \$8.85
 - 20 hours or less/week: \$5.35



Uniform Pay Requirements (cont.)

- Tips for Avoiding Extra Pay for Uniforms:
 - Mandatory uniforms vs. Dress codes
 - Removable nametags with company logos
 - Laundry on premises
 - Provide sufficient number of “wash and wear” uniforms based upon average weekly work days



Questions?



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